punishment on adults as a retrograde measure. On the other hand we recognise, with regret, the fact that there has been a marked increase of lawlessness in recent times and certain types of offences, particularly extortion, are becoming increasingly prevalent, a deplorable state of affairs which has been acknowledged by the Legislature in the recent enactment of the Prevention of Crime Ordinance.

Whilst, therefore, we adhere to the view already expressed in these Courts on various occasions and whilst in principle we deprecate the use of corporal punishment except in cases involving violence or brutality, we acknowledge — as, indeed, we must — the fact that there may be cases which justify the Courts exercising the discretion, undoubtedly vested in them, of imposing a sentence of corporal punishment even though no actual violence or brutality may have been used. We emphasise, however, that even in such cases the Court should consider long and anxiously before it exercises such a discretion. Each case, of necessity, must depend upon its own facts and upon the character and antecedents of the offender.

In the present case, we are reluctant to interfere. The offence was undoubtedly a serious one. On the other hand the accused are first offenders and there is nothing to show any connection between them and the throwing of the hand-grenade of which they attempted to take advantage some two days after it occurred. Again it is clear that the Public Prosecutor whose views regarding the state of crime are entitled to some consideration did not regard the Magistrate's sentences as very inadequate. He made no attempt to appeal against them and we were informed that at the original hearing of the appeal he made no reference to them. At the original trial in the Magistrate's Court both the Public Prosecutor and the accused were represented by counsel and the case was very thoroughly gone into. In all the circumstances of this particular case we can see no reason for interfering with the exercise of his discretion by the Magistrate.

The only order we make is that the appeal against conviction is dismissed.

Order accordingly.

A.B.C. v. THE COMPTROLLER OF INCOME TAX, SINGAPORE

[A.C.J. (Buttrose J.) May 4, 1959]

[Singapore — Income Tax Case Stated No. 1 of 1959]

Income Tax — Assessment — Notices — Validity of — Whether Comptroller is required to specify sources of income — Waiver and estoppel — Proof of fraud or wilful default under s.73 of the Income Tax Ordinance (Cap. 166) — Case stated under s.82.

Income Tax Ordinance (Cap. 166) — Comparison with English and Australian legislation.

The Comptroller of Income Tax under the provisions of section 76 (1) of the Income Tax Ordinance, served upon the appellant certain Notices of Assessment and Additional Assessment dated December 22, 1954, in respect of the years of assessment 1948 to 1954 inclusive. These Notices were in the prescribed form and were completed before service, showing a total figure for assessable income carried forward and brought forward, a figure for chargeable income and a figure for tax payable but not disclosing any description or source of income. By letter dated December 23, 1954, the appellant objected to the assessments and the additional assessments in question, this letter being treated by the Comptroller as a Notice of Objection in writing under section 76 (2) of the Ordinance. The appellant did not in this letter raise any question of the invalidity of the Notices of Assessment and Additional Assessment. Further correspondence passed between the Comptroller and the appellant and the Comptroller finally gave notice of his refusal to amend the assessments or additional assessments in question in the course of the year 1958. The appellant thereupon appealed to the Board of Review under the provisions of section 79 (1) of the Income Tax Ordinance, and filed his Petition of Appeal under that section on August 28, 1958. No objection to the form or validity of the Notices was taken in this Petition. Notice of hearing by the Board of Review was given for January 6, 1959, and by his Notice dated January 5, the appellant gave notice to the Comptroller that at the hearing of the appeal before the Board of Review he intended to apply to the Board for permission to have his Petition amended by the addition thereto of a further Ground of Appeal as follows: "That the Notices of Additional Assessment and Assessment against which assessments the Petitioner is appealing did not contain in substance and fact the particulars on which the assessments have been made."

At the hearing of the application to amend, no Order was made by the Board either on the application or on the merits of the proposed amendment, but the Board informed the parties of its intention to state a case to the High Court. The case was accordingly stated, the material facts being substantially as set out above, and the following questions of law were referred for the opinion of the High Court:

(1) Are the Notices of Assessment (which term in these questions includes Notices of Additional Assess-

ments) referred to in paragraph 6 hereof valid and in accordance with the provisions of Part XI of the Ordinance?

(2) If not, (i) is the taxpayer in the events which have happened estopped from alleging that the said Notices are invalid or otherwise not in accordance with the provisions of Part XI of the Ordinance either by reason of his conduct or by reason of his failure to allege the same in his notice of objection under section 76; or otherwise, (ii) has the appellant in the events which have happened waived the invalidity or non-compliance with the provisions of Part XI of the Ordinance?

(3) If the answer to questions (1) and (2) are in the negative, can the invalidity or other defect in the said Notices be cured by amendment?

(4) If the answers to questions (1), (2) and (3) are in the negative, is the Comptroller now precluded from issuing fresh valid Notices of Assessment in accordance with the provisions of Part XI of the Ordinance?

(5) Is the validity of the Notices of Assessment or Additional Assessment material in determining objections by the appellant to the assessments or additional assessments of tax imposed upon him by the Comptroller under the Income Tax Ordinance?

Held: (1) the Comptroller of Income Tax is not required to specify or give particulars of the source of the taxpayer's income before a legal liability to tax is disclosed, and accordingly the Notices of Assessment and Additional Assessment are valid and in accordance with the provisions of the Ordinance;

(2) (i) as this ground of appeal was raised for the first time in 1959, there would be estoppel if there was prejudice to the Comptroller by the operation of the time bar under section 73 (1) of the Ordinance in regard to any of the years under review; whether or not this is so is dealt with in the answer to question (4) below; (ii) once the appellant has appealed to the Board of Review he must be taken to have admitted the validity of the Notices of Assessment and Additional Assessment, and thus to have waived his right to object to them on the grounds of their invalidity;

(3) an invalidity in a Notice of Assessment cannot be cured by amendment;

(4) if the Assessments and Additional Assessments themselves are valid, fresh Notices of Assessment or Additional Assessment may be issued at any time. If the assessments and additional assessments themselves are invalid, fresh valid assessments or additional assessments may be raised outside the six-year period where there is fraud or wilful default on the part of the taxpayer. The onus of disproving fraud or wilful default is upon the taxpayer;

(5) the validity of the Notices of Assessment and Additional Assessment is immaterial in determining the objections by the appellant to the assessments and additional assessments in question.

"The Australian legislation i.e. *The Income Tax and Social Services Contribution Assessment Act, 1936-1957* bears a closer resemblance to the Singapore system than the English Act."

Cases referred to:—

(1) *Rhodesia Metals Ltd. v. Taxes Commissioner* (1940) 3 All E.R. 422, 425.

(2) *R. v. Deputy Federal Commissioner of Taxation for South Australia; ex parte Hooper* (1926) 37 C.L.R. 368, 373; R. & McG. 70, 71.

(3) *Gamini Bus Co. v. Commissioner of Income Tax (Colombo)* (1952) A.C. 571.

(4) *Federal Commissioner of Taxation v. Clarke* (1927) 40 C.L.R. 246, 251.

(5) *Trautwein v. Federal Commissioner of Taxation* (1936) 56 C.L.R. 63, 87; 4 A.T.D. 48, 62 and 63.

(6) *George v. Federal Commissioner of Taxation* (1952) 86 C.L.R. 183.

(7) *British Estate Investment Society Ltd. v. Jackson* 37 T.C. 79, 84.

(8) *Australian Machinery & Investment Co. Ltd. v. Federal Commissioner of Taxation* (1946) 3 A.I.T.R. 359; 8 A.T.D. 81; 20 A.L.J. 234.

(9) *McAndrew v. Federal Commissioner of Taxation* (1956) 30 A.L.J. 464; 11 A.T.D. 131.

(10) *Dixon v. Gaunt Ltd.* 29 T.C. 289, 295.

INCOME TAX.

F. N. Bucher, Q.C. (*G. H. Poh* with him) for the appellant.

G. S. Hill for the respondent.

Cur. Adv. Vult.

Buttrose J.: This is a case stated under section 82 of the Income Tax Ordinance (Chapter 166), hereinafter referred to as 'the Ordinance', by the Board of Income Tax Review for the opinion of the High Court and relates to appeals against certain assessments and additional assessments to income tax for the years of assessment 1948 to 1954 inclusive.

After the appellant had been assessed for the years of assessment 1948 to 1954 inclusive and the assessments paid, the Comptroller by letter dated the 12th May, 1954 informed the appellant that he was beginning a general inquiry into the appellant's income tax position covering the period 1946 to 1953, and in exercise of his powers under section 65 of the Ordinance gave notice to the appellant requiring him within the time limited in the notice to supply certain particulars. On the 11th June, 1954 the appellant furnished the Comptroller with a statement of his capital assets at 1946 and at 1953. Further correspondence passed between the Comptroller and the appellant and on the 24th November, 1954 the Comptroller gave notice to the appellant that estimated additional assessments were

being raised for all the years in question. In December 1954 assessments and additional assessments were, in fact, raised by the Comptroller under the provisions of sections 72 and 73 of the Ordinance for the years of assessment 1948 to 1954 inclusive.

The Comptroller under the provisions of section 76(1) of the Ordinance caused to be served on the appellant a notice of assessment or additional assessment as the case may be in respect of each of the said years. These notices were all dated the 22nd December, 1954 and are the ones in question in the case stated. By letter dated the 23rd December, 1954, the appellant returned all the said notices of assessments to the Comptroller and rejected in writing the said assessments and additional assessments made upon him and requested the Comptroller to furnish the appellant with reasons for or detailed basis on which the Comptroller made the assessments.

Further correspondence passed between the Comptroller and the appellant and on the 1st May, 1958 the Comptroller gave notice to the appellant that he did not propose to amend any of the assessments or additional assessments.

On the 29th July, 1958 the appellant filed with the Comptroller and the Clerk to the Income Tax Board of Review a Notice of Appeal under section 79(1) of the Ordinance and on the 28th August, 1958 the appellant lodged with the said Clerk a Petition of Appeal containing a statement of the Grounds of Appeal.

By Notice dated 5th January, 1959 the appellant gave notice to the Comptroller that at the hearing of the appeal which was fixed for the following day, the 6th January, 1959, he intended to apply to the Board of Review for leave to amend his Petition by adding an additional Ground of Appeal, *viz.* —

> "That the Notices of Additional Assessments and Assessments against which assessments the petition is appealing do not contain in substance and effect the particulars on which the Assessments have been made."

At the commencement of the hearing of the Appeal on the 6th January, 1959 application was made by the appellant in accordance with the terms of the said notice to amend his Petition.

The application was opposed by the Comptroller and the Board of Review after hearing argument agreed to defer making a decision on the said application and informed the parties of their intention to state a case to the High Court.

The questions stated in the case for decision were:—

(1) Are the Notices of Assessment and Additional Assessment (dated 22nd December, 1954 referred to above) valid and in accordance with the provisions of Part XI of the Ordinance?

(2) If not, (i) is the taxpayer in the events which have happened estopped from alleging that the said Notices are invalid or otherwise not in accordance with the provisions of Part XI of the Ordinance either by reason of his conduct or by reason of his failure to allege the same in his notice of objection under section 76; or otherwise, (ii) has the appellant in the events which have happened waived the invalidity or non-compliance with the provisions of Part XI of the Ordinance?

(3) If the answers to questions (1) and (2) are in the negative, can the invalidity or other defect in the said Notices be cured by amendment?

(4) If the answers to questions (1), (2) and (3) are in the negative, is the Comptroller now precluded from issuing fresh valid Notices of Assessments in accordance with the provisions of Part XI of the Ordinance?

(5) Is the validity of the Notices of Assessment or Additional Assessments material in determining objections by the appellant to the assessments or additional assessments of tax imposed upon him by the Comptroller under the Income Tax Ordinance?

The main and substantial question for decision was as to the validity of the Notices of Assessment and Mr. Bucher on behalf of the appellant propounded the question in this way: Do the Notices of Assessment represent a legal liability to income tax? His argument was that since the Notices of Assessment did not indicate any source of income they did not disclose any liability to Singapore income tax at all and therefore the Notices were bad in law and so were any Assessments which the Notices reflected. It was, he said, a defect of substance which went to the root of the liability.

It will be convenient at the outset briefly to consider these Notices. The Notices of Assessment and Additional Assessment in question were sent out to the appellant in the prescribed form and merely informed him that the Comptroller had made an assessment or additional assessment as the case may be as detailed below on his income. The details below simply consisted of a figure and nothing more and it was described by Mr. Bucher, in effect, as a blank piece of paper with a figure stated on it and that it reflected no liability to tax because it failed to show the source of income. He contended that under the Ordinance tax depended in its entirety on certain specified sources of income and he pointed to various sections of the Ordinance as clearly indicative of this. The Forms for return of income, it was submitted,

clearly reflected the intention of the Ordinance that the tax was not on a combined figure but a tax on items of income derived from sources which are required to be specified by the taxpayer in making his return. Reference was made to the provisions of the English Income Tax Act of 1952 and it was submitted that as in the United Kingdom Act so in the Ordinance there was the system of a tax on income derived from specified sources and it was almost a fundamental principle that a person was entitled to know under which source of income he was being taxed.

In considering the English legislation however it must be borne in mind as was indicated by Lord Atkin in *Rhodesia Metals Ltd. v. Taxes Commissioner* [1] at page 425 that decisions on the words of one statute are seldom of value in deciding on different words in another statute and that different business operations may give rise to different taxing results.

In the United Kingdom there exists what may be conveniently described as the schedule system of taxation whereby income from each source is taxed and treated as a separate entity, tax in a number of instances being payable at the source whereas in Singapore the assessment is made on the net results to the taxpayer from all sources of assessable income. The United Kingdom system of schedules is not to be found in the Ordinance where income is merely assessed as income whereas under the English Act it is necessary to assess it under one or other of the five schedules.

In the view at which I have arrived there is a clear distinction between the English Act and the Ordinance. Under the English system each of the schedules forms a complete code in itself in respect of the tax which falls under it. Each code is distinct and complete in itself and is run by different people.

The Australian legislation, *i.e.* The Income Tax and Social Services Contribution Assessment Act 1936 – 1957 to which I was referred and which I have carefully considered bears a closer resemblance to the Singapore system than the English Act.

The charging sections, for example, of the Australian Act, *viz.*, sections 17, 25 and 26 are similar in principle to the charging section, section 10, of the Ordinance. The only difference being that the Australian legislation gives wider scope while ours is slightly more restricted. In Australia it is income from all sources while in Singapore it is income from all specified sources.

In my opinion therefore the English cases if not entirely inapplicable must be treated with considerable reserve.

What I have to do is to construe the Ordinance as it stands. Now the assessment provisions contained in Part XI of the Ordinance provide for two distinct processes or operations:—

(a) assessment;
(b) the issue of notices of assessment.

Under section 72 the Comptroller shall proceed to assess every person chargeable with tax.

In the case of default assessments or where it appears to the Comptroller that a person has been assessed at a less amount than that which ought to have been charged the Comptroller may.....assess such person at such amount or additional amount as according to his judgment ought to have been charged. As was stated by Isaacs J. in *The King v. The Deputy Federal Commissioner of Taxation for South Australia; ex parte Hooper* [2]:

> "An assessment is not a piece of paper: it is an official act or operation; it is the Commissioner's ascertainment, on consideration of all relevant circumstances, including sometimes his own opinion, of the amount of tax chargeable to a given taxpayer. When he has completed his ascertainment of the amount, he sends by post a notification thereof called 'a notice of assessment'.....But neither the paper sent nor the notification it gives is the 'assessment'. That is and remains the act or operation of the Commissioner."

The assessment itself is the administrative act of the Comptroller and determines the quantum of the tax and as was stated by Mr. Hill it involves a mathematical calculation and the exercise of judgment. See *Gamini Bus Co. v. Commissioner of Income Tax (Colombo)*. [3]

The actual assessment is not required to be in writing save as required by section 74 of the Ordinance which provides that the Comptroller shall as soon as possible prepare lists called assessment lists of persons assessed to tax which shall contain the names and addresses of the persons assessed to tax, the amount of the chargeable income of each person, the amount of tax payable by him and such other particulars as may be prescribed. I was informed that none have been.

Section 76 then goes on to provide that the Comptroller shall cause to be served personally or sent by registered post to each person whose name appears on the assessment list a notice stating the amount of his chargeable income, the tax payable by him, the place at which such payment shall be made and informing him of his rights to have his assessment reviewed and

revised by the Comptroller under sub-section (2) thereof.

It was not in dispute that the Notices of Assessment in question contained these particulars and it is these Notices of Assessment which impose the liability to pay and set the time running for objecting to the *quantum* of the assessment. They do not affect the amount payable.

It was argued on behalf of the appellant that because these Notices of Assessment and Additional Assessments simply contained a figure and did not specify or give particulars of the sources from which the chargeable income was derived they are bad.

It is no doubt a truism to say that you cannot have income without a source but on the construction of the Ordinance as a whole I am unable to find anything which requires the Comptroller or imposes upon him a duty to specify or give particulars of the sources of a taxpayer's income before a legal liability to tax is disclosed. Section 10 of the Ordinance declares the liability. It provides that income tax shall be payable upon the income of any person.....in respect of all sources specified in the section. It determines what persons in respect of what property are liable. The Assessment merely quantifies the exact sum due. The Notice of Assessment imposes the liability.

The Comptroller is, in my view, perfectly entitled under the Ordinance to say "I determine your chargeable income at $\$x$ and assess your liability to tax at $\$y$" and nothing more.

It was argued further that such a construction would place an oppressive and intolerable burden on the taxpayer. By section 80(3) of the Ordinance the onus of proving that the assessment is excessive is placed on the appellant taxpayer. The principle involved was enunciated by Ag. C.J. Isaacs of the Australian High Court in *Federal Commissioner of Taxation v. Clarke* [4] at p. 251 as follows:

> "The justice of that burden cannot be disputed. From the nature of the tax, the Commissioner has, as a rule no means of ascertainment but what is learnt from the taxpayer, and the taxpayer is presumably and generally, in fact, acquainted with his own affairs. The onus may prove to be dischargeable easily or with difficulty according to the circumstances."

If the taxpayer fails to discharge it because he has conveniently lost his memory or his books or failed to keep proper books he must take the consequences. The onus on the appellant here is not only to show that the assessment is wrong but what must be done to put it right. The taxpayer appellant does not rebut the presumption merely by showing that there is an error in the assessment and thereby creating a blank — he must go further as was indicated in *Trautwein v. Federal Commissioner of Taxation* [5] and show either that there ought to be a blank — a complete omission of the item in question, or that something else should be substituted for that item.

To discharge the burden the appellant taxpayer must necessarily exclude all sources of income except those which he admits. His case must be that he did not derive from any source taxable income to the amount of the assessment.

The appellant here is not entitled, in my view, to the particulars as to the source or sources from which the Comptroller alleges that the appellant derived the amounts in question set out in the Notices of Assessment. The Comptroller may no doubt assign a source if he wishes but there is nothing in the Ordinance which can compel him to do so.

As was pointed out by Kitto J. in *George v. Federal Commissioner of Taxation* [6] if the Commissioner attempts to prove derivation from a particular source and fails, he is nonetheless entitled under the Act (The Income Assessment Act 1936 – 1947, of Australia) to point to another source, or, without bothering about source at all to stand upon his assessment and submit that the presumption in his favour has not been displaced.

I think that is precisely the position under the Ordinance.

In my opinion the Notices of Assessment and Additional Assessments are valid and in accordance with the provisions of Part XI of the Ordinance as also are the assessments which they reflect.

The answer therefore to the first question in the case stated is: Yes.

Questions 2, 3 and 4 arise only out of a negative answer and require no further consideration but I have been requested to express my views on certain matters raised by them and I propose to do so very briefly. On the assumption that the Notices of Assessment are invalid the second question is as to whether the appellant taxpayer is estopped from alleging that they are invalid or otherwise not in accordance with the provisions of Part XI of the Ordinance either by reason of his conduct or by reason of his failure to allege the same in his notice of objection under section 76; or as to whether

he has waived the invalidity or non-compliance with the provisions of Part XI of the Ordinance.

Now under section 76(2) of the Ordinance a taxpayer who disputes an assessment may apply to the Comptroller by notice of objection in writing to review and to revise the assessment made upon him and such application shall state precisely the grounds of his objections to the assessment. I agree with Mr. Hill that neither in the appellant's letter to the Comptroller of the 23rd December, 1954 which constituted the notice of objection, nor throughout the correspondence, nor in the Petition of Appeal was there any indication or suggestion that the Notices of Assessment or the Assessments they reflected were invalid. The objection was as to *quantum* only. It was not until the 5th January, 1959 some four years after the notice of objection and on the day before the actual hearing of the appeal before the Board of Review that the additional ground of the invalidity of the Notices of Assessment was sought to be added.

If this ground were now admitted and the appellant were to succeed on it the Comptroller it is said would be prejudiced because he would be out of time to raise further assessments in proper form for the years 1948 – 1952 by reason of the provisions of section 73(1) of the Ordinance.

There was here I think, in effect, a representation by the appellant to the Comptroller that he was not going to rely on any ground of appeal other than those stated in his Notice of Objection and Petition of Appeal and there was undoubted prejudice to the Comptroller if he was time-barred. In other words there was an estoppel here if there was prejudice to the Comptroller.

With regard to waiver it appears to me that once the appellant had appealed, or to use the words of Mr. Hill "set the machinery of appeal to the Board of Review in motion," by filing his notice of appeal he must be taken to have admitted the validity of the Notice of Assessment and to have waived his right to object to it. *British Estate Investment Society, Ltd. v. Jackson* [7] at page 84 illustrates the principle.

Having expressed my own views for what they are worth on these questions of estoppel and waiver it seems to me they really give rise to matters for the Board of Review to consider. The position as it appears to me is governed by Part XII of the Ordinance (which is a complete code in itself dealing with appeals) and in particular section 79(6) thereof.

For this purpose section 79(6) may be conveniently paraphrased in this way by saying that a taxpayer is entitled to put forward any ground of appeal at any stage up to and even during the hearing of his appeal with the consent of the Board and on such terms as it may determine.

If for the sake of argument the Board were to come to the conclusion that because of the delay prejudice would result to the Comptroller if the amendment were allowed the Board would no doubt either refuse it or allow it on such terms as would remove the prejudice. They are matters entirely for the exercise of the Board's discretion and it would be wrong for this Court to usurp that discretion or in any way seek to fetter it. Each application must be considered by the Board on its merits and in the light of all the surrounding facts and circumstances. No doubt the Board, in the exercise of its discretion under section 79(6), would have regard to the prerequisites required for the exercise of its discretion under section 79(5) amongst other things but it would in my view be improper for this Court in any way to attempt to limit or restrict the exercise of the Board's discretion in this matter.

As to the third question in the case stated which was as to whether the invalidity or other defect in the Notices of Assessment could be cured by amendment this should in my opinion be answered: No.

A further point which arose, again on the assumption that the Notices of Assessment were bad, was as to whether the Comptroller is now precluded from issuing fresh valid Notices of Assessment in accordance with the provisions of Part XI of the Ordinance. Section 73(1) of the Ordinance puts a time limit on assessments by providing that where it appears to the Comptroller that any person liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged the Comptroller may within the year of assessment or within six years after the expiration thereof, assess such person at such amount or additional amount as according to his judgment ought to have been charged. There is a proviso that in the case of fraud or wilful default the Comptroller may assess at any time.

On the basis that the Assessments are valid, Notices of Assessment may be issued at any time. On the other hand if the Assessments

are invalid then of course fresh valid assessments may now be raised for the years 1953 and 1954 in any event, but what of the years 1948 to 1952 which on the face of it are time-barred.

In *Australian Machinery & Investment Co. Ltd. v. Federal Commissioner of Taxation* [8] it was held that although the Court sometimes sets an assessment aside so that the Commissioner must make a reassessment or a further assessment as distinct from amending an existing assessment nevertheless such new assessments cannot be attacked under section 170 of the Australian Act the equivalent of our section 73. While I accept that position the situation with which we are faced here is somewhat different. Here the Notices were said to be bad in law and so were the Assessments which the Notices reflect. They were in effect a nullity and void *ab initio*, as if they never were. The contention here was that there was no assessment at all and the Comptroller couldn't begin to assess unless he could first assign a source to the chargeable income. That so it seems to me is quite a different thing from setting an assessment aside and making a reassessment because the taxpayer has been taxed on a wrong principle.

It was also argued by the respondent that even if the Assessments were bad fresh Assessment could still nevertheless be raised for the years 1948 to 1952 in reliance on the proviso to section 73(1), the onus of disproving fraud or wilful default being on the taxpayer and it was submitted that the Court should pronounce upon the construction of that proviso. In support of the proposition the respondent relied on *McAndrew v. Federal Commissioner of Taxation* [9] while the appellant relied on *Dixon v. Gaunt Ltd.* [10] at p. 295 as showing that the onus lies on the Comptroller to the end of the case.

The question raised is a difficult one and I should require a fuller and more detailed argument before pronouncing any firm opinion on the matter.

The wording of the proviso is "where any form of fraud or wilful default has been committed.....the Comptroller may.....assess at any time."

It follows therefore that an assessment or additional assessment could not be made by the Comptroller out of time unless fraud or wilful default had been committed. The Comptroller must be satisfied that those conditions are fulfilled before he can raise an assessment or additional assessment out of time.

The effect of the decision in *McAndrew's case* [9] to which I have just referred was that in these circumstances where on appeal to the Board of Review under the provisions of Part XII of the Ordinance there is an issue as to whether there has been fraud or wilful default then the onus is on the taxpayer of proving to the reasonable satisfaction of the Board the particular fact or facts which take the case outside the proviso to section 73. The Court went on to say that this meant that the *onus probandi* was on the taxpayer if his objection was that he had made a full disclosure of all material facts necessary for his assessment or that there had not been an avoidance of tax by fraud or wilful default. I am inclined to the view that on the proper construction of the Ordinance and the proviso this is the correct interpretation.

Whether or not there has been fraud or wilful default is a question of fact for the Board of Review to decide.

Finally, in my opinion, the validity of the Notices of Assessment or Additional Assessments is not material in determining objections by the appellant to the Assessments or Additional Assessments to tax imposed upon him by the Comptroller under the Ordinance. The Notice of Assessment which imposes the liability to pay, indicates to the taxpayer that he has two courses open to him either to pay the specified amount of income tax within one month from the date of service of the Notice or if he disputes it to give written notice of objection within thirty days from the date of service. It was, not inaptly, I think, described by Mr. Hill as a sign post and the appellant has now gone beyond the sign post.

The fifth question in the case stated as it stands should therefore, in my view, be answered: No.

Questions answered.

Solicitors: *Wee Swee Teow & Co.; Rodyk & Davidson.*